

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 22-CR-20505-GAYLES/TORRES

UNITED STATES OF AMERICA,

vs.

**KEVIN ABARCA and
JORGE PEREZ-DECESPEDES,**

Respondent.

/

ORDER AFFIRMING AND ADOPTING REPORT OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court on Chief Magistrate Judge Edwin G. Torres' Report and Recommendation on *Daubert* Motion (the "Report"). [ECF No. 228]. On December 22, 2023, Defendant Kevin Abarca ("Defendant") filed his Motion in Limine (the "Motion"). [ECF No. 189]. The United States of America (the "Government") filed its Response in Opposition to the Defendant's Motion to Exclude Ballistics Testimony on January 17, 2024. [ECF No. 201]. On January 31, 2024, the Motion was referred to Judge Torres for a report and recommendation. [ECF No. 209]. Subsequently, on March 5, 2024, an evidentiary hearing on the Motion was held. [ECF No. 227]. Judge Torres' Report recommends that the Court grant, in part, and deny, in part, Defendant's Motion. [ECF No. 228]. Neither party filed objections.

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review, if those objections "pinpoint the specific findings that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific

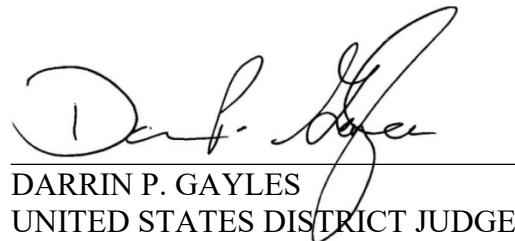
objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

This Court finds no clear error with Judge Torres' well-reasoned analysis and agrees that the Motion must be granted, in part, and denied, in part.

Accordingly, after careful consideration, it is **ORDERED AND ADJUDGED** as follows:

- (1) Chief Magistrate Judge Edwin G. Torres' Report and Recommendation on *Daubert* Motion, [ECF No. 228], is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference; and
- (2) Defendant Kevin Abarca's Motion in Limine, [ECF No. 189], is **GRANTED, in part, and DENIED, in part**, as follows:
 - a. DENIED as to Defendant's Motion for exclusion of Tyler Brown's testimony; and
 - b. GRANTED as to limiting Tyler Brown's testimony to the directives of the Department of Justice's Uniform Language for Testimony and Reports for the Forensic Firearms/Toolmarks disciplines.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of March, 2024.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE